



GDPR effects on Gift Aid

Presented by

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- The Principles

■ **Accountability**

Processed lawfully, fairly and in a transparent manner

- Collected for specified, explicit and legitimate purposes
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed
- Accurate, kept up to date



- The Principles

- **Accountability**

- Kept in a form which permits identification of data subjects for no longer than necessary for the purpose for which the data is processed
- Security

“the controller shall be responsible for, and be able to demonstrate, compliance with the principles”



- The Principles

- **Lawful processing**

- For processing to be lawful under the GDPR, you need to identify a lawful basis for processing data and document this
- Processing is necessary for compliance with legal obligation - Gift Aid





- The Principles

- **Individuals' Rights**

The right to be informed – provide 'fair processing information' typically through a privacy notice. The information must be concise, transparent, intelligible and easily accessible, written in clear and plain language



- The Principles

- **The Right to be informed**

Information that must be supplied at the time the data is obtained – privacy statement

- Identify and contact details of the data controller
- Purpose for the processing and lawful basis for the processing
- The legitimate interests of the controller
- Any recipient of the personal data



- The Principles

- **Right to be informed**

Information that must be provided at the time the data is obtained – privacy statement

- Retention period
- The existence of each of data subject's rights
 - The right to withdraw consent at any time, where relevant
 - The right to lodge a complaint with the ICO
 - The existence of automated decision making, including profiling



- The Principles

- **The right of access**

Individuals will have the right to obtain –

- Confirmation that their data is being processed
- Access to their personal data
- Provide this information free of charge
- This information must be provided within one month of receipt





- The Principles

- **The right of access**

- You must verify the identity of the person making the request using 'reasonable means'
- If the request is made electronically, you should provide the information in electronic format
- Recommendation to provide remote access to a secure self service system



- The Principles

- **The right to rectification**

- Individuals are entitled to have personal data rectified if it is inaccurate or incomplete
- If you have disclosed the personal data, in question, to third parties, you must inform them of the rectification, where possible
- You must respond within one month





- The Principles

- **The right to erasure or right to be forgotten**

Does not provide an absolute 'right to be forgotten. Individuals have a right to have personal data erased if –

- The data is no longer necessary in relation to the purpose for which it was originally collected/processed
- When the individual withdraws consent



- The Principles

- **The right to erasure or right to be forgotten**

Does not provide an absolute 'right to be forgotten'. Individuals have a right to have personal data erased if –

- When the individual objects to the processing and there is no overriding legitimate interest for continuing the processing
- The data was unlawfully processed
- The personal data has to be erased to comply with legal obligation





- The Principles

- **The right to erasure or right to be forgotten**

You can refuse to comply with a request –

➤ to comply with a legal obligation – Gift Aid





- The Principles

- **The right to object**

Individuals have the right to object to –

- Processing based on legitimate interests
- Direct marketing
- Processing for purposes of scientific/historical research and statistics





- The Principles

- **The right to object**

You must stop processing personal data unless:

- you can demonstrate compelling legitimate grounds for processing
- the processing is for the establishment, exercise or defence of legal claims

You must stop processing data for direct marketing as soon as you receive an objection



- The Principles

- **Accountability and Governance**

Requires you to demonstrate that you comply with the principles and states explicitly that this is your responsibility.

- Implement appropriate technical and organisational measures that ensure and demonstrate that you comply
- Maintain relevant documentation on processing activities



– The Principles

- **Breach notification**

A personal data breach means a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This means that a breach is more than just losing personal data.

- inform the relevant supervisory authority
- Inform those concerned directly
- 72 hours to report serious breach





- The Principles

- **Communicating Privacy Information**

Privacy Statement must contain -

- Lawful basis for processing
- Retention periods
- The right to complain to ICO
- Lawful Basis – compliance, accountability
- Legitimate Interest





- Consent

Consent must be a freely given, specific, informed and unambiguous indication of the individuals wishes. There must be some form of clear affirmative action, a positive opt in.

- Consent can not be inferred from silence, pre-ticked boxes or inactivity.
- Must be separate from other terms and conditions
- You can rely on other lawful bases apart from consent, example where processing is necessary for legitimate interests
- Separate communication for opt in and opt out



– consent checklist

- Check that consent is the most appropriate lawful basis for processing
- Make the request for consent prominent and separate from your terms & conditions
- Ask for positive opt in
- Don't use any type of consent by default
- Specify why you want the data and what you are going to do with it
- Give granular options to consent





– consent checklist

- Name your organisation and any third parties
- Inform individuals they can withdraw their consent
- Ensure they can refuse consent without detriment
- Do not make consent a precondition of a service
- Keep a record of when and how consent was given by an individual, or withdrawn
- Keep a record of exactly what they were told at the time



What we need to consider

➤ Greater control – transparency for opt in

Purpose of communication –

- ☐ Newsletter
- ☐ Events
- ☐ Fundraising
- ☐ Campaigning



What we need to consider

➤ Greater control – transparency for opt in
Communication by what method

- ☐ Post
- ☐ Email
- ☐ Telephone
- ☐ SMS
- ☐ Social media



HMRC - Compliance

- Retention period – 6 years for audit purposes
- Enduring declaration forms
- Up to date records
- Communicating with donors – notification for standard method, end of year statements for method A & B



What we need to consider

- HMRC legal Analysis – we are not Data Controllers in common with HMRC
- HMRC Privacy Statement - as we are passing our data to them. Link Gov.UK website
- Transparently & Accountability
- Legitimate Interest – sharing information, will they share with us ? Yes on a individual basis if necessary for tax compliance purposes

What we need to consider

- Right to be forgotten - under Legal obligation we have to retain donor details for 6 years
- ICO comment – we can refuse to delete donor records in order to comply with Legal Obligations. Need to make donors aware – transparency



What we need to consider

- Consent – need to ask donors to update their details ie change of address for opt in and outs
- ICO comment – Can ask donors to keep their records up to date by post to comply with legal obligations, but not by email, as this needs consent. Need to give the donor greater control

Clear Guidance

On “legal obligation”, charities are under a legal obligation to obtain and retain certain personal data in relation to claims for Gift Aid. However, they are not under a legal obligation to solicit donations. So any data processing that underpins those activities will be on the basis of ‘legitimate interests’ and are decisions for individual charities to make for themselves.

Clear Guidance

- Donor giving us their gift aid details - consent
- We making a claim to HMRC - is covered by legal obligation. We can't rely on consent, as they could withdraw it, but it is in our interests to get more money, so this is our legitimate interest. Unless we have money we can't provide our services.
- Keeping the details for 6 years - legal obligation
- And although there can be all these different legal bases for the different parts of the process, the one we can use to cover all of it, is legitimate interests.

Clear Guidance

- **Data minimisation** HMRC's expectations on record keeping for audit purposes only, and explicitly that after this has elapsed those records are destroyed.
- **Storage limitations** Data being held in regard of enduring GAD's. Retention periods for non active donors should be considered. We should not be holding data for longer than necessary.

Clear Guidance

Clear information in your Privacy Statements to inform the donor of –

- What you are collecting the data for
- How long it will be retained
- Who it will be shared with – 3rd parties
- Data Cleansing - matching with national records Royal Mail redirect etc

A photograph of a beach with waves crashing onto the shore. The sand is light-colored and the water is a mix of blue and green. The words "THANK YOU" are written in the sand in a simple, hand-drawn style.

THANK YOU